IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 10408 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NITINBHAI MATHURDAS THAKKAR

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Misc.Application No. 10408 of 2004

MR ASHISH M DAGLI for Petitioner No. 1-5

PUBLIC PROSECUTOR for Respondent No. 1

MR ASHISH H SHAH for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/05/2005

ORAL JUDGMENT

Heard learned counsel appearing for the parties

and Ms.N.V. Joshi, ld.APP, appearing on behalf of the respondent-State.

2. Rule. The formal service of Rule is waived by Ms.N.V. Joshi, ld.APP, on behalf of the respondent no.1 and Mr.A.H.Shah for respondent no.2. The Rule is fixed forthwith on consent.

3. Invoking jurisdiction of this Court, the petitioners have approached this Court for quashing the complaint being Criminal Inquiry Case No.299 of 2004 and the order dated 1st September, 2004, passed in Criminal Inquiry Case No.299 of 2004, by the ld.Chief Judicial Magistrate, Rajkot, for the offences punishable under Section 406, 420 and 114 of the Indian Penal Code.

4. It is submitted jointly by the learned counsel appearing for the petitioner as well as orig.complainant that the parties are not interested in a detailed reasoned order as they have compounded the matter out of the Court and agreed to see that all the litigations comes to an end. The Court is informed that the parties have decided to separate from the matrimonial ties and they have executed a Deed of Divorce on 3rd May, 2005. Both the parties have signed the same and a notarized xerox copy of the original Deed of Divorce is tendered to the Court for perusal and the same is taken on record. The complainant as well as the accused, both are present before the Court and on instructions it is submitted that the petitioner may be allowed as prayed for. In view of the ratio of the decision in the case of B.S. Joshi and others v. State of Haryana and another, reported in 2003(4) SCC 675, where the Apex Court while dealing with a complaint for the offences punishable under Section 498(A) and 406 of the Indian Penal Code has observed that where there was almost no chance of conviction, it would be improper to decline to exercise powers of quashing on the ground that it would be permitting the parties to compound non-compoundable offence, non-exercise of inherent powers to quash the proceedings to meet with the ends of justice would prevent women from settling earlier. It is experienced that dragging of a criminal complaint even after settlement between the parties in certain class and category of offences results against the object and intention of penology and also the faith in criminal justice delivery system. So when the High Court is requested to exercise inherent powers vested with it under Section 482 of the Code of Criminal Procedure r/w. Article 226/227 of the Constitution of India, the High Court can categorize cases in which such powers can be exercised. The observation of the Apex

Court in the case of B.S. Joshi (supra) (paras:5,6 and 8) referring to the decision in the case of Bhajan Lal [1992 (supp) 1 SCC 335] has direct bearing to the present case. This ratio can be applied in number of prosecution cases. The case falling in such categories may not be exhaustive but the illustrations are sufficient to guide us.

5. Looking to the settlement arrived at between the parties, Ms.N.V. Joshi, ld.APP, submits that appropriate orders may be passed.

6. In view of the above observations, the present petition is hereby allowed. The complaint being Criminal Inquiry Case No.299 of 2004 and the order dated 1st September, 2004, passed in Criminal Inquiry Case No.299 of 2004 by the ld.Chief Judicial Magistrate, Rajkot directing investigation under Section 156(3) of Code of Criminal Procedure, are hereby quashed and set aside.

Rule is made absolute accordingly.

( C.K. Buch, J)

Aakar